IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 80 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKKAR NANDKUMAR SITARAM

Versus

DISTRICT SUPPLY OFFICER MEHSANA

Appearance:

1. Criminal Revision Application No. 80 of 2001

MR MAHESH BHAVSAR for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1

MR BD DESAI-PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/02/2002

ORAL JUDGEMENT

#. The petitioner herein has preferred this Criminal Revision Application under Section 397 read with 401 of the Criminal Procedure Code, challenging the judgment and

order dated 19.12.2000 recorded in Criminal Appeal No.23/1998 by the learned Special Judge acting under the Essential Commodities Act, 1955 at Mehsana.

#. The District Supply Officer, Mehsana had passed an order on 28.1.1998 under which the Swaraj Mazda Matador bearing No.GRO-4881 was ordered to be confiscated to the State under the provisions of the Essential Commodities Act.

#. The said order was carried in appeal by the present petitioner unsuccessfully. Therefore, the present Revision Application has been filed. On receipt of the Revision Application rule was issued and Mr.B.D.Desai, learned APP appears in response of the service of rule. I have heard Mr.Bhavsar, L.A. for the petitioner and Mr.Desai, learned APP for the State.

#. During the course of hearing of argument it was noticed that the order passed by the District Supply Officer and confirmed by the learned Special Judge at Mehsana reads as follows:-

> "The Swaraj Mazda Matador No.GRO-4881 valued at Rs.95,000/-. A part of the said bulk at an amount of Rs.18,950/- shall be confiscated to the State."

#. Now, it is very clear that there is only one Swaraj Mazda Matador in dispute before us. There cannot be any bulk of goods when the vehicle is only one in number, therefore, it is difficult to get implemented the order in question. It is true that the value has been fixed at Rs.95,000/-. However, it is difficult to understand as to how a portion of the said vehicle worth Rs.18,950/- could be confiscated by the District Supply Officer.

#. The learned APP, at one point of time, argued that the vehicle can be disposed of by the public auction and out of the sale proceed, an amount of Rs.18,950/- should go to the State and remaining amount should go to the petitioner. Now, this is not the order portion on the face of the record and on a careful reading of this order it is difficult to agree with the said contention of the learned APP. At the second thought he also agreed that the order in question cannot be implemented in terms of the order. Therefore, it is very clear that the order requires clarity and this can be done only by the authority which has passed the order. For the said purpose the matter has to be remanded to the said officer or authority for deciding the matter a fresh according to law.

#. In above view of the matter the parties had not argued the matter on factual merits or on other legal aspect of the case. Therefore, I am not required to deal with and decide the said contention raised in the Revision Application by the petitioner.

#. Even the learned APP also agrees that the matter is required to be remanded to the original authority for fresh consideration and decision on merits according to law. The learned advocate for the petitioner also agrees with the same.

#. In above view of the matter and on the basis of the consent of the parties, this Criminal Revision Application is partly allowed. The order passed by the learned District Supply Officer, Mehsana dated 28.1.1998 and confirmed by the Special Judge, Mehsana on 19.12.2000 in Criminal Appeal No.23/1998 is quashed and set aside. The matter is remanded back to the learned District Supply Officer, Mehsana for hearing and decision on the issue in question on merits. The learned District Supply Officer will hear the parties concerned and, thereafter, decide the issue on merits in accordance with law. Rule is made absolute to above extent.

(D. P. BUCH, J.)

kks